

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROD BITNEY**, on February 21, 2003 at 3:00 P.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Rod Bitney, Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Alan Olson, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Eileen J. Carney (D)
Rep. Tim Dowell (D)
Rep. Daniel Fuchs (R)
Rep. Hal Jacobson (D)
Rep. Jeff Laszloffy (R)
Rep. Scott Mendenhall (R)
Rep. John Parker (D)
Rep. Diane Rice (R)
Rep. Brennan Ryan (D)
Rep. Jim Shockley (R)

Members Excused: None.

Members Absent: None.

Staff Present: Glenna McClure, Committee Secretary
Mary Vandembosch, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 700, 2/19/2003; HB 641,
2/14/2003; HB 710, 2/19/2003; HB
637, 2/14/2003; HB 684, 2/18/2003
Executive Action: HB 479; HB 637; HB 684; HB 710

HEARING ON HB 700

Sponsor: REPRESENTATIVE JOHN BRUEGGEMAN, HD 74

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 2.5 - 6}

REP. BRUEGGEMAN said that HB 700 does not change any environmental standards. No changes are made in the time allowed to offer public comments or to file permit appeals with the Board of Environmental Review. The bill further clarifies the authority of the Board to adopt rules for general permits for discharges from categories of point sources. Section 3 and some of Section 4 prevent an automatic stay from blocking Department of Environmental Quality (DEQ) air and groundwater permits indefinitely while administrative appeals to the Board of Environmental Review are resolved. Appeals can take months or years to resolve. The cost to permit applicants and DEQ, because of the automatic stay that currently exists in statute, can be very large. HB 700 would allow DEQ's decision to become final unless the affected party chooses to apply for and obtains a stay from the Board of Environmental Review. The party applying for the stay must meet certain standards as are outlined in Sections 3 and 4. This is definitely a fairness issue.

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 6 - 19.3}

Don Quander, Smurfit Stone Container/Holsim Inc., Billings, said that the fundamental air and water permitting in Montana is pretty solid but can use improving. HB 700 addresses some problem areas. It specifically addresses "automatic stays." Page 4, Line 13 of the bill deals with appeals to the Board of Environmental Review. The Board is recognized in Montana as a Quasi-Judicial Board and, therefore, functions as an adjudicatory body in contested case proceedings. The party making the appeal does not have to request a stay or make any showing that there is a basis for the request. Simply by requesting a hearing the finality of the decision for the air quality permit by the DEQ is stayed pending resolution by the Board of Environmental Review. HB 700 requires parties filing an appeal to file an injunction, or stay, to the Board in order to prevent the DEQ decision to become final. The burden then is placed on the appealing party to demonstrate the need for a stay. This will not affect many permit processes, but it is important for those that it does affect.

Steve Wade, Bull Mountain Development Company, said this is a straightforward bill that does some simple things and levels the playing fields. This bill expands the rules afforded the Board of Environmental Review. He urged a do pass.

Don Allen, Western Environment Trade Association, said that he agreed with those who have gone before him.

Jim Mockler, Executive Director, Montana Coal Council, said that he encourages the committee to pass this bill.

Cari Hegreberg, Montana Contractors' Association, distributed a packet of material that addresses the concerns that they have as smaller companies. This bill will relieve some of the burden on smaller operators and urge the committee to give it a do pass.

EXHIBIT (feh39a01)

Tom Figarelle, Forward Montana, said he was in support of HB 700 and agreed with the previous proponents.

Opponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 19.3 - Tape: 1; Side: B; 5.4}

Ann Hedges, Montana Environmental Information Center, said that this bill is an attempt to stop organizations from exercising their right to protect air quality. Citizens should not be threatened with paying thousands of dollars for telling the state it made a mistake. The air quality permitting process works. In the last four years over 700 air quality permits have been issued; eleven have been appealed; four of which have been appealed by the company itself; seven appealed by a wide range of citizens. One percent have been appealed by citizens. She then went through in great detail the permits that were appealed.

There is a sixty-day time period for reviewing and issuing permits regardless of the size. If the permit requires an Environmental Impact Statement, the state has only 180 days to conduct its analysis. She said that this bill should be tabled. She distributed a packet of information. She also distributed information regarding the effects of mercury on children.

EXHIBIT (feh39a02)

EXHIBIT (feh39a03)

Don Judge, representing the Montana Chapter of the Sierra Club, said that they have some questions regarding this bill. He said that they question who would be responsible for the costs of damage that may occur while the appeal is being resolved if there is no stay. He questioned if this bill would preclude someone filing an appeal if the impact is on the environment or animals. He questioned what is meant by "substantially prevailing party" with regard to the payment of attorney fees, staff costs, and other costs associated with contested case proceedings on Page 5, Line 3. He agreed with the testimony of Ann Hedges. He said that this bill is unnecessary, has grave constitutional problems, has legal and technical problems, and is liable to become a lawyers quagmire in making determinations. He urged the committee to give a do not pass recommendation.

CHAIRMAN BITNEY indicated that the time was up for testimony, but encouraged further opponents to state their name and who they represent for the record.

Julia Page, Northwestern Plains Resource Council, said that she had concerns about the bill.

Informational Testimony: None

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 5.4 - 15.8}

REP. CARNEY asked Ms. Hedges in what way she found this bill to be unconstitutional.

Ann Hedges said that was the analysis of Greg Petesch. She said that her guess is that the Board is given judicial functions.

REP. CARNEY asked, "If the companies are able to continue their permitting process while an appeal is being filed, what recourse would individuals have if there are serious problems?"

Ann Hedges said that the stay was put in place to make sure that permitting decisions were not made until the Board acted. It is economic sense to make them do it right from the start.

REP. CARNEY asked Ms. Page about the problems with water quality.

Ms. Page said that her concern was that there would not be site-specific reviews.

REP. DOWELL asked Ms. Hedges if the state required a specific level of mercury emissions in air quality reviews.

Ms. Hedges said, "No."

REP. DOWELL asked the sponsor if he was aware of any mercury controls by the state.

REP. BRUEGGEMAN said that he was not aware of any mercury provisions required by the state. He referred to the representative from the DEQ.

Charles Homer, Supervisor, Technical Support Section, Air and Waste Management Bureau, DEQ, said that he was not familiar with the specific requirements for mercury emissions. He said that the Environmental Protection Agency (EPA) is in the process of establishing mercury standards.

REP. OLSON asked if Mr. Homer was familiar with the monitoring of mercury at Colstrip as part of an EPA test project.

Mr. Homer said that he was not aware of the test and did not think that the DEQ was involved.

Closing by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 15.8 - 21.1}

REP. BRUEGGEMAN said that if an appeal has merit they do not have to pay. He said that if the process continues and there is a problem, that is the risk that the company has to take. It comes down to the fact that we need to be fair in the permitting process. Every major project has been appealed. It is important that there be some risk on the part of those who want to come to the process. This bill would streamline the process and give the Board of Environmental Review the authority that they have in case law.

HEARING ON HB 641

Sponsor: REPRESENTATIVE DICK HAINES, HD 63

Opening Statement by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 21.1 - 26.3}

REP. HAINES said that he has proposed some amendments to the bill which he distributed.

EXHIBIT (feh39a04)

He indicated that the proponents and the opponents have discussed the bill and may have some additional amendments. He said the that an originating carrier is the company that is used when an individual makes a telephone call. The person at the other end of the call is utilizing the company that is termed the terminating carrier. The terminating carrier bills costs to the originating carrier. If the call is routed over the facilities of an intermediate carrier, that carrier gets some compensation from the originating carrier. The problem is that the terminating carrier is not getting the information from some organizations so that they can bill the originating carrier when they terminate the call on their facilities. The bill is to put into the statute that the in-between carrier will configure their facilities in a way that the terminating carrier will get the information it needs to bill the originating carrier. There has been some reluctance on the part of the intermediate (in-between) carrier to give this information to the terminating carrier. This bill will allow the terminating carrier to go to the originating carrier to put together an agreement that will give the terminating carrier the information needed to bill the originating carrier. The bill gives an avenue for the terminating carrier the opportunity to go to the Public Service Commission if there is a problem.

Proponents' Testimony:

{Tape: 1; Side: B; Approx. Time Counter: 26.3 - Tape: 2; Side: A; 21.2}

Geoff Feiss, General Manager, Montana Telecommunication

Association, said that Montana-based companies provide services and jobs throughout the state. They work at keeping rates affordable while keeping up with the latest technology. A substantial portion of their operating revenue is derived from charges that local networks bill to originating carriers for the service of terminating calls on the local network. As much as 80% of the traffic is not identifiable and, therefore, not billable. Local networks do not have a means by which to accurately identify or verify the originating carrier. They also have no control over the traffic that is terminated on their network so they can neither identify carriers nor block them from terminating on their network. There is no incentive for the originating carriers to negotiate agreements. HB 641 requires

all carriers to play by the same rules and pay for the services that they receive. He explained wording in the bill and the potential amendments.

Rick Hays, Qwest, said that the problem is a compensation issue. He distributed a copy of the bill with amendments. He said that the intentions of the amendments are to clarify responsibilities and to set up a mechanism that allows companies who originate local calls and companies who terminate local calls to enter into an agreement for payment for those calls. He went over the handout.

EXHIBIT (feh39a05)

Bill Squires, General Counsel, Blackfoot Telephone Cooperative, said that his company provides local service to about 19,000 rural residents and businesses in Western Montana. Local rates pay about 30% of their annual revenue. A big part of the 70% are from the charges for terminating calls as explained in earlier testimony. It is a way to protect their customers from additional rate increases. The bill also provides for the transiting carrier (or intermediate carrier), to provide records to the terminating carrier of calls from originating carriers.

Phil Maxwell, Three Rivers Communications, Fairfield, provided the committee with a written copy of his testimony.

EXHIBIT (feh39a06)

CHAIRMAN BITNEY indicated that the allotted time was expired. He asked that further proponents state their name and who they represent.

Mike Strand, CEO and General Counsel, Montana Independent Telecommunications Systems, said that they support the bill and amendments.

Chuck Evilsizer, Attorney, Ronan Telephone Company, said that he agrees with the theory of this bill. He said that he opposes the amendments.

Tom Schneider, Public Service Commission, said that they agree with this bill with amendments.

Opponents' Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 21.2 - 30}

Michael Bagley, Director of Public Policy, Verizon Wireless, said that they oppose the bill, but do not oppose the concept. He said that they feel that this bill requires companies to install additional trunk groups and that it would be cost prohibitive. They would agree to look at alternatives. They are not interested in a free ride.

Margaret Morgan, Western Wireless, Cellular One, said that they have not been approached regarding this bill. She said that they oppose this bill, but would offer two amendments that would make it realistic. Under Section 1, Subsection 5, they would add "except wireless telecommunications traffic." This would be consistent with the FCC definition for wireless telecommunications traffic. In New Section 2, Subsection 3, she would like to propose that it read "a transiting carrier is required to provide billing records to commission upon request. The commission shall establish by rule the reasonable cost of providing the billing records, and the cost of providing the records must be borne by the terminating carrier who requests the billing records to bill the originating carrier."

Informational Testimony: None

Questions from Committee Members and Responses:

{Tape: 2; Side: B; Approx. Time Counter: 0.4 - 18.6}

REP. BROWN asked what progress has been made in bringing all the people together, including the wireless people, since last session.

Mr. Feiss said that there has been substantial progress. They have been working with Qwest, since they are the primary players in this issue.

REP. BROWN asked if they would be amenable to the "except wireless telecommunication traffic" amendment suggested by Ms. Morgan.

Mr. Feiss said, "No." He indicated that the bill has been posted on the web for a while. To exempt wireless carriers would essentially emasculate the bill because much of the traffic that is terminated on the end carrier is wireless traffic. He said

that they have all the infrastructure and trunks available to make this bill work.

REP. BROWN asked Commissioner Schneider what the Commissions' stand would be if money is recovered as a result of this bill. She asked if customers expect to see a break on their phone bill.

Commissioner Schneider said that would be the case for companies regulated by the Public Service Commission. It may be that rates would not be increased. Many of the companies are not regulated by PSC.

REP. CARNEY asked if there is, or will be, technology for terminating carriers to identify the originating carriers.

Mr. Feiss said there is not a problem with technology of the terminating carrier. He said that the bill does not recommend how the solution is accomplished, but that the originating traffic is identified and billed for.

REP. MATTHEWS asked if companies that don't have contracts in Montana would be forced to come to the table.

Mr. Feiss said, "Upon request."

There was much discussion about who were originating and terminating carriers.

CHAIRMAN BITNEY asked Mr. Evilsizer if he had some additional comments for the committee.

Mr. Evilsizer said that he was in support of the bill but opposes the amendments. He said that some of the amendments may be contrary to provisions in the Federal act regarding who can request an interconnection agreement. The amendment regarding the mixture of traffic is not clear. Under the Federal act, interconnection agreements are only supposed to be local traffic. The amendments refer to interconnection agreements when the traffic has a mixture of both local and non-local wireline and wireless traffic. It is unclear what rate would be charged. One of the amendments awards judicial powers to the PSC to award damages and attorney fees. This would definitely affect the consumers.

Closing by Sponsor:

{Tape: 2; Side: B; Approx. Time Counter: 18.6 - 19.4}

REP. HAINES said that he failed to make a disclosure that he owns one share of Lincoln Telephone stock and he sits on their Board. He said that this bill will keep the process working. He reiterated that the purpose of the bill is not to say how to do it but to do it. He will get the amendments to the staff person by tomorrow.

HEARING ON HB 710

Sponsor: REP. HOLLY RASER, HD 70

Opening Statement by Sponsor:

{Tape: 2; Side: B; Approx. Time Counter: 19.4 - 26}

REP. RASER said that this bill deals with electronic e-mail communications. This is basically called the anti-spam bill. Spam is unsolicited, unnecessary, unwanted e-mail. She shared some of the spam e-mails that she has received in the past few days. Most e-mails are easy to identify as spam because they have information in the subject line that identify them as a vendor. Some e-mails are very deceptive and contain information in the subject line that would cause a person to believe that it is from a friend or acquaintance. There is no way to block and restrict people from sending this type of e-mail because it is a violation of interstate trade. This bill would require anyone who is sending an electronic commercial or message to identify them as advertisements or information with adult content. She recommended that the committee recommend a do pass.

Proponents' Testimony:

{Tape: 2; Side: B; Approx. Time Counter: 26 - Tape: 3; Side: A; 2.2}

Cort Jensen, Consumer Protection Office, said that this bill is modeled after a Federal bill sponsored by Senator Conrad Burns. Many states are getting together to create uniform rules that will require spam to be labeled. It would require a company sending spam to identify it as "ADV" or "ADV-Adult" if it contains adult content. As more states apply this rule, it will make it easier for the Federal law to be adopted.

Tony Herbert, Deputy Chief Information Officer, Department of Administration, said that they have determined that 8% of their e-mail traffic is spam. They changed their policies to allow them to place filters on spam e-mail in the beginning of December. In less than three months they have blocked over 175,000 spam messages received on the state's network. Spam costs networks money because they take away from the bandwidth of the network that should be used for the purpose originally designed for the network. It takes time, software, and attention to block spam. This bill is a good step in the right direction.

Jim Kembel, representing himself, said that his lifeblood is through e-mail. Spam costs him a great deal of time.

Opponents' Testimony:

{Tape: 3; Side: A; Approx. Time Counter: 2.2 - 10.8}

Chuck Evilsizer, Attorney, Ronan Telephone Company and Montana Sky Net, said that they generally favor this bill. A couple of the provisions in the bill are problematic. In Section 2, it indicates liability on the part of those who assist in the transmission of messages. This would affect companies that have no control over those transmitted messages. The definition of "assist" is not broad enough to prohibit the innocent companies from being prosecuted. Maybe some labeling or a charge to the senders would be a viable suggestion.

Aimee Grmoljez, Motion Picture Association, said that she was in opposition of this bill. She described the difference between solicited and unsolicited e-mail. She said that they don't feel this bill distinguishes between the two. The bill is also vague on what is considered "sexually oriented" material.

Rick Hays, Qwest, said that they are in opposition only because of the vagueness of the bill. It is too broadly drafted. The concept is good however. It would be difficult to determine the origination of the e-mail.

Mike Bagley, Verizon Wireless, said that they are in opposition to the bill.

Informational Testimony: None

Questions from Committee Members and Responses:

{Tape: 3; Side: A; Approx. Time Counter: 10.8 - 17}

REP. CARNEY asked Mr. Jensen if he could address some of the concerns of the opponents.

Mr. Jensen addressed the concern raised regarding "assisting." He said that the bill provides for prosecution of companies who "knows or consciencely avoids knowing" the e-mail is spam. When this law has been applied in other states, no Internet Service Provider (ISP) has been found guilty except in Germany where the ISP helped draft the e-mail message. The second issue was the definition of "sexually oriented" information. This is just a case of labeling so that people who do not want to receive questionable material don't receive it. Solicited e-mail is when a person agrees to receive e-mail from a particular vendor.

REP. PARKER suggested a friendly amendment to the sponsor about including language to change "sexually oriented" to "obscene sexual writings or pictures."

REP. RASER said that she would agree to that amendment.

REP. RICE asked about liabilities associated with "assisting."

Cort Jensen said that when a provider attempts to block spam mail they will not be held liable.

Closing by Sponsor:

{Tape: 3; Side: A; Approx. Time Counter: 17 - 19.5}

REP. RASER said that this is clearly a problem of wasted time. We need a way to filter this type of e-mail from coming into our home and workplace computers. She said that she agreed with REP. PARKER that the wording be tightened up. The intention of the bill is to identify the e-mail so that it can be quickly deleted if it is unwanted. We can't prevent the sending, but we can require that they label it. She thanked the committee and asked for a do pass.

HEARING ON HB 637

Sponsor: REP. HOLLY RASER, HD 70

Opening Statement by Sponsor:

{Tape: 3; Side: A; Approx. Time Counter: 19.5 - 22}

REP. RASER said that this bill also deals with electronic communications. This bill deals with unsolicited faxes. When someone is sending you unsolicited faxes, they are essentially stealing your paper and your ink from your ink cartridges that is in your fax machine. This bill has some teeth to it. There can be restrictions on communications sent by fax.

Proponents' Testimony:

{Tape: 3; Side: A; Approx. Time Counter: 22 - 27.2}

Cort Jensen, Consumer Protection Office, said that this bill is in the Federal law. The FCC has only two people, nationwide, that handle these cases. The minimum cases for one of these people to come to investigate is 250,000 faxes. Passage of this bill would allow Montana to use the State courts rather than the Federal courts to prosecute these cases. States have every right to prohibit unwanted faxes.

REP. BROWN said that she is a business owner and has a fax machine. This bill will not only save her paper and print cartridges, it will save sleep since many of these faxes arrive during the night or early morning. She said she is in full support of this bill.

Jim Thornton, Arlee resident, said that he asked REP. RASER to consider this bill. He said that in seven days he received 16 faxes. These come during business hours and on the same phone for conducting his business. When he is getting these unwanted faxes it prevents him from receiving the business calls. This is costing money from lost business calls. He shared some of the faxes that he has received. Faxes are worse than e-mail since they cannot be blocked and they use his paper and ink cartridges.

Jim Kembel, Montana Association of Chiefs of Police, said that they appreciate REP. RASER for introducing this bill and asked for the committee's support.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

{Tape: 3; Side: A; Approx. Time Counter: 27.2 - Tape: 3; Side: B; 2}

REP. PARKER asked Mr. Jensen if the State would have jurisdiction over a company sending a fax from out of the State.

Cort Jensen said that all State laws apply to the faxes that have the area code for states that do not allow unsolicited faxes.

REP. LASZLOFFY asked if there was the manpower to enforce this if it were to become law.

Cort Jensen said that they work with the other states. They only have seen about two cases a year. States who have this law, however, have experienced a large decline in unwanted faxes.

REP. BITNEY asked about random unsolicited faxes.

Cort Jensen said that there is a \$200 fine per incident.

Closing by Sponsor:

{Tape: 3; Side: B; Approx. Time Counter: 2 - 2.6}

REP. RASER said that this is "feel good" legislation. We would all feel good if we did not get unsolicited faxes. This is current Federal law, we just don't have it Montana. It would be good to have Montana be one of the first to have this law.

HEARING ON HB 684

Sponsor: REP. ALAN OLSON, HD 8

Opening Statement by Sponsor:

{Tape: 3; Side: B; Approx. Time Counter: 2.6 - 4.5}

REP. OLSON said that last session he brought a bill that was heard in House Agriculture that would allow the transfer of a revoked mining permit that had a repealer date of October 1, 2005. There was some contingency language in the bill that if the Federal law on surface mining didn't agree with it that it

would be eliminated. He distributed a copy of the affected statute.

EXHIBIT (feh39a07)

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

{Tape: 3; Side: B; Approx. Time Counter: 4.5 - 7.7}

REP. OLSON said that this worked well on the Roundup Project and saved the State some money. He said the bonding got straightened out. The process worked well.

REP. PARKER had a question regarding the statute.

Mary Vandembosch indicated that this bill only repealed the effective date it was not repealing a section of law.

EXECUTIVE ACTION ON HB 479

{Tape: 3; Side: B; Approx. Time Counter: 7.7 - 20.2}

Motion: REP. MATTHEWS moved that HB 479 DO PASS.

Motion: REP. MATTHEWS moved that HB 479 BE AMENDED.

EXHIBIT (feh39a08)

Discussion:

Mary Vandembosch explained the amendments. She reiterated that cramming is receiving unauthorized charges on phone bills and slamming is unauthorized changes of long distance carriers.

Vote: Motion that HB 479 BE AMENDED carried unanimously.

Motion/Vote: REP. MATTHEWS moved that HB 479 DO PASS AS AMENDED. Motion carried 11-3 with REPS. FUCHS, LASZLOFFY, and MENDENHALL voting no by voice vote.

EXECUTIVE ACTION ON HB 637

{Tape: 3; Side: B; Approx. Time Counter: 20.2 - 20.6}

Motion/Vote: REP. BROWN moved that HB 637 DO PASS. Motion carried unanimously by voice vote.

Members agreed unanimously to put this bill on the Consent Calendar.

EXECUTIVE ACTION ON HB 684

{Tape: 3; Side: B; Approx. Time Counter: 20.6 - 22.7}

Motion/Vote: REP. OLSON moved that HB 684 DO PASS. Motion carried unanimously by voice vote.

There were no objections to put this bill on the Consent Calendar.

EXECUTIVE ACTION ON HB 710

{Tape: 3; Side: B; Approx. Time Counter: 22.7 - 27.7}

Motion: REP. PARKER moved that HB 710 DO PASS.

Motion/Vote: REP. PARKER moved that HB 710 BE AMENDED. Motion carried unanimously by voice vote.

Discussion:

There was some discussion regarding the bill.

Motion/Vote: REP. PARKER moved that HB 710 DO PASS AS AMENDED. Motion carried 13-1 with REP. LASZLOFFY voting no by voice vote.

Note: REP. RYAN voted by proxy on all bills.

ADJOURNMENT

Adjournment: 5:55 P.M.

REP. ROD BITNEY, Chairman

GLENNA MCCLURE, Secretary

RB/GM

EXHIBIT (feh39aad)